



SUPREME COURT OF THE UNITED STATES.

No. — Original.—OCTOBER TERM, 1919.

William Duhne, Complainant, }
vs. }
The State of New Jersey et al. }

[January 12, 1920.]

Memorandum opinion by Mr. Chief Justice WHITE,
by direction of the Court.

The complainant, a citizen of New Jersey, asked leave to file an original bill against the Attorney General of the United States, the Commissioner of Internal Revenue thereof and the United States District Attorney for the District of New Jersey, as well as against the State of New Jersey. The bill sought an injunction restraining the United States officials named and the State of New Jersey, its officers and agents, from in any manner directly or indirectly enforcing the Eighteenth Amendment to the Constitution of the United States, any law of Congress or statute of the State to the contrary, on the ground that that amendment was void from the beginning and formed no part of the Constitution.

Answering a rule to show cause why leave to file the bill should not be granted, if any there was, the defendants, including the State of New Jersey, denied the existence of jurisdiction to entertain the cause and this is the first question for consideration.

So far as the controversy concerns the officials of the United States, it is obvious that the bill presents no question within the original jurisdiction of this court and in effect that is not disputed since in substance it is conceded that the bill would not present a case within our original jurisdiction if it were not for the presence of the State of New Jersey as a defendant. But it has been long since settled that the whole sum of the judicial power granted by the Constitution to the United States does not embrace the authority to entertain a suit brought by a citizen against his own State without its consent. *Hans v. Louisiana*, 134 U. S. 1; *North Carolina v. Temple*, 134 U. S. 22; *California v. Southern Pacific Company*, 157 U. S. 229; *Fitts v. McGhee*, 172 U. S. 516, 524.

It is urged, however, that although this may be the general rule, it is not true as to the original jurisdiction of this court, since the second clause of section 2, Article 3 of the Constitution, confers original jurisdiction upon this court "in all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party," In other words, the argument is that the effect of the clause referred to is to divest every State of an essential attribute of its sovereignty by subjecting it without its consent to be sued in every case if only the suit is originally brought in this court. Here again the error arises from treating the language of the clause as creative of jurisdiction instead of confining it to its merely distributive significance according to the rule long since announced as follows: "This second clause distributes the jurisdiction conferred in the previous one into original and appellate jurisdiction, but does not profess to confer any. The original jurisdiction depends solely on the character of the parties, and is confined to the cases in which are those enumerated parties and those only." *Louisiana v. Texas*, 176 U. S. 1, 16. That is to say, the fallacy of the contention consists in overlooking the fact that the distribution which the clause makes relates solely to the grounds of Federal jurisdiction previously conferred and hence solely deals with cases in which the original jurisdiction of this court may be resorted to in the exercise of the judicial power as previously given. In fact, in view of the rule now so well settled as to be elementary, that the Federal jurisdiction does not embrace the power to entertain a suit brought against a State without its consent, the contention now insisted upon comes to the proposition that the clause relied upon provides for the exercise by this court of original jurisdiction in a case where no Federal judicial power is conferred.

As the want of jurisdiction to entertain the bill clearly results, it follows that the permission to file must be and it is denied and our order is,

Rule discharged.

A true copy.

Test:

Clerk Supreme Court, U. S.

